BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III SC03-1846
_____/

RESPONSE TO MOTION TO ENFORCE SUBPOENA
AND MOTION FOR PROTECTIVE ORDER

Comes now John K. Renke II, through the undersigned counsel, and for his Response to Motion to Enforce Subpoena Duces Tecum and Motion for Protective Order says:

1. The "Subpoena Duces Tecum for Deposition" is not valid. The subpoena on its face commands the appearance for deposition at the offices of Judy Moukazis & Associates on March 20, 2005 at 9:00 a.m. March 20, 2005 was Palm Sunday. A subpoena requiring the appearance on a Sunday is totally improper. *Shenker v. United States of America*, 25 F.R.D. 96 (E.D.N.Y. 1960); Trawick's Florida Practice and Procedure, 2005 Edition

Additionally, the address on the subpoena is invalid. As the attached Affidavits of John Renke II and Margaret Renke demonstrate, there is no Court Reporters Annex at the 7530 Little Road address. The trailer which formerly housed the court reporter's office at that location was no longer there on March 20, 2005.

2. Scott Tozian is not the attorney of record for John Renke II and has not filed any appearance or pleading so stating. The letters attached to the motion marked as Exhibits B, C and D were never sent and the content of the letters was never communicated to John Renke II. The movant never sent the letter to John Renke II and no one, including Scott Tozian, ever forwarded or sent a copy of the letters to John

Renke II. Further, no one ever told him about the letters until after John Renke II received this motion. John Renke II never retained Scott Tozian as his attorney. Neither Michael Green nor Scott Tozian had authority or power from John Renke II to act as his attorney and represent him and make any agreement regarding the subpoena or documents to be produced.

3. The Subpoena Duces Tecum was not issued in accordance with the Florida Rules of Civil Procedure. F.R.C.P. 1.351 requires that a notice be served upon a party before issuance of a third party subpoena. No notice was ever served or filed to allow any proper objections to the subpoena by the party.

4. A copy of the subpoena itself was forwarded to John Renke II by Scott Tozian by fax on March 10, 2005. As demonstrated by the attached affidavits, John Renke II and Margaret Renke, despite knowing the subpoena was not proper, did appear at the time, date and place designated in the subpoena on Palm Sunday, March 20, 2005 at 9:00 a.m. at the vacant lot where the court reporter's trailer formerly was situated. Again, John Renke II received no phone call, no letter (including the March 8, 2005 letter marked as Exhibit A to the Motion to Enforce Subpoena Duces Tecum) and no contact whatsoever from Michael K. Green, Marvin Barkin or Thomas MacDonald asking or telling John Renke II not to appear on March 20, 2005 for deposition in response to the subpoena. However, Messrs. Green, Barkin and/or MacDonald did not show up at the time and place designated to review the records. Nor did anyone else appear at the scheduled deposition with document production other than John Renke II and Margaret Renke.

5. Mr. Tozian did contact John Renke II subsequent to receipt of the subpoena by John K. Renke II, and Mr. Tozian asked whether John Renke II would voluntarily allow Mr. Green to come to the law office of John Renke II to review certain documents requested in the subpoena. Mr. Tozian was told by John Renke II that he would volunteer to research and compile documents in response to the document production request and allow Mr. Green to review thousands of documents even though most of the said documents were not relevant to the charges which are the subject of this action.

6. Considerable hours were spent compiling the massive document request. The law office of John Renke was contacted by Mr. Tozian's office, and Mr. Green, as attorney for the movant, came to John Renke II's law office and was given a room with literally thousands of documents and boxes of litigation files as requested in the subpoena. This production was not pursuant to any additional subpoena, but was a matter of courtesy, at the oral request of Scott Tozian because he indicated it would help the defense of Judge John Renke III to provide these documents. Mr. Green had access to the documents for the full day on March 21, 2005.

On that day, Mr. Green looked through hundreds of documents. However, Mr. Green stated, after spending all day, that he had not examined all of the documents and told the attorney who was present, Christina Mendoza, and he also told Margaret Renke, that he did not want any copies, but that he would later contact the law office. See attached Affidavits of Christina Mendoza and Margaret Renke. It was Mr. Green who stopped looking at the documents, and inferred that he would contact the office again if he wanted to resume inspection.

7. To this date neither Green, Barkin, MacDonald, nor anyone else contacted John Renke II or his law office to arrange for a date to continue inspection of the thousands of documents. Absolutely no attempt was made by counsel for the movant to contact John Renke II to resume any inspections.

8. John Renke II never saw the letters marked as Exhibits B, C, and D until he received the Motion to Enforce Subpoena.

9. Additionally, a deposition of John Renke II was scheduled for March 1, 2005 and taken by Michael Green. This deposition was given voluntarily by John Renke II even though no notice was served upon him because movant's counsel said they made a mistake. Mr. Green voluntarily and on his own stopped the taking of the deposition. At the time of that deposition, John Renke II told Mr. Green he could come to the law office of John K. Renke II and review records. However, John Renke II told Mr. Green that a number of the legal files he was requesting to examine were personal injury files that contained private medical, employment and other confidential information of clients which were totally irrelevant to any charge against Judge Renke, and would be subject to attorney client privilege. Mr. Green indicated to John Renke II and Mr. Tozian that he understood the sensitive and privileged nature of that material and he believed a protective order or something could be worked out to protect the privilege of clients whose personal injury files he wanted to review. Green stated to John Renke II that he would talk with commission members and get back to John Renke II on the method to use to protect these clients' personal information.

10. Scott Tozian also informed Michael Green on several occasions that all he had to do to continue reviewing the requested records was to contact the Law Office of

John Renke II. See for example the letter dated March 4, 2005 from Mr. Tozian to Mr. Green attached as Exhibit A hereto, a copy of which was sent to John Renke II on the date of the letter.

11. At the deposition of Tom Gurran held on April 6, 2005, Mr. Green said that he still had to find time to finish reviewing the documents. Mr. Green had previously stated that he had a trial in Michigan and would not be available for Mr. Gurran's deposition until April and would not be able to continue inspection of the documents until some time later. He again acknowledged on April 6, 2005 that he had not yet received an answer to the privilege problems related to the employment and medical files and photographs of injuries of clients, but he would let me know. This was the third time we had requested a stipulation or agreement to protect the privileged information of clients contained in the files of John Renke II. At no time thereafter did Michael Green contact John Renke II or his office until this motion was filed. At no time did Mr. Green or Tozian advise John Renke II that a protective order would be necessary. In fact, no protective order is necessary because there is no extant proper subpoena. All document production to date was not pursuant to subpoena for deposition, but was only a voluntary production of documents pursuant to an oral request by Mr. Tozian.

12. John Renke II never refused or withheld any documents whatsoever. Those documents in response to the subpoena remain, as always, at the Law Office of John Renke II and Mr. Green, Barkin or MacDonald may set up an appointment at a reasonable time to continue review of these documents. At no time did John Renke II tell Mr. Green, or anyone else, that further document review would not be allowed. Contrary to the allegation contained in the motion, John Renke II has always

volunteered and cooperated by providing access to documents even without a proper subpoena.

It is clear that Mr. Green was advised by Mr. Tozian, by the law office of John Renke II and by John Renke II, himself, that all he needed to do to continue review of documents was to contact John Renke II. He failed to do so, and violated the due process rights of witness, John Renke II, by falsely alleging a refusal to allow a review of documents without ever talking to John Renke II, or communicating to him in writing. The supposed letters attached as Exhibit B, C and D were not sent to John Renke II. However, it is clear that movant's counsel received the letter attached as Exhibit A, hereto, from Mr. Tozian again clearly advising counsel to get in touch with John K. Renke II.

Thus, after repeatedly being asked to contact John Renke II, counsel for the moving party failed, neglected and refused to even contact John Renke II, request the documents or to set up a time for review of the same. Instead, movant wrongfully filed a motion containing false allegations, causing false information and charges to be published in the newspaper. The motion should be dismissed and counsel directed to follow the Florida Rules of Civil Procedure regarding issuance of proper subpoenas.

The "Subpoena Duces Tecum for Deposition" failed to give the undersigned the minimum of thirty days that he is entitled to before he can be compelled to produce documents or object to their production. A person cannot be compelled by subpoena to produce documents or items for inspection within less than 30 days after service. This is true even when the document production is sought in connection with a proposed deposition at the same time pursuant to the subpoena. *Ohio Casualty Insurance*

Company v. Jackman, 621 So. 2d 531 (Fla. 2d DCA 1993) at footnote 1. Therefore, the subpoena is defective due to its failure to give at least thirty days notice before the production of documents or objection to production is required. Furthermore, even thirty days' notice is not enough time to gather the requested documents and cull out privileged matters. The requested documents contain clients' medical records, photographs of clients' injuries and confidential attorney-client communications, so all such items are not subject to production and must first be culled out.

Further, the subpoena is an overly broad, unduly burdensome fishing expedition that would never be upheld by any Florida court. Florida courts do not allow fishing expeditions disguised as discovery requests. *Walter v. Page*, 638 So. 2d 1030 (Fla. 2d DCA 1994). If the request for documents is overly broad (see *Walter v. Page*, supra) or unduly burdensome (see Rule 1.280 Fla. R. Civ. P.), then a protective order must be issued. Id. Here, the subpoena is vague, overbroad and involves many hours of work to again assemble the thousands of documents requested. Therefore, if a new subpoena is issued in the correct manner, then a protective order must be entered to order that the discovery not be had of privileged material (see Subsection (c) of Rule 1.280 Fla. R. Civ. P.). However, the movant must file a new subpoena clearly delineating what documents should be produced that have not already been reviewed and setting a new date for production. Then, and only then, can a proper protective order be requested.

13. The undersigned is an attorney and a member of the Florida Bar and is representing himself in this matter.

14. Rule 1.280 (c) Fla. R. Civ. P. incorporates Rule 1.380(a)(4) Fla. R. Civ. P. for the purpose of authorizing an award of attorneys fees and reasonable expenses to the person who has obtained a protective order. Those attorney's fees and reasonable expenses shall be paid by the party whose conduct necessitated the motion for protective order or such party's attorney who advised the party.

Finally, the movant's counsel requests a finding of contempt. Rule 26 of the Judicial Qualifictions Commission clearly provides that the method for contempt is by a motion filed in the Circuit Court of the County where the act was committed. This rule states as follows:

> Rule 26. Contempt.
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> Should any witness fail, without justification, to respond to the lawful subpoena of the Commission or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding of the Commission, *a motion may be filed in the name of the Commission before the Circuit Court of the County in which the contemptuous act was committed*, alleging the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of an alleged contempt of the Commission. *Such motion shall pray for the issuance of an order to show cause before the Circuit Court why the Circuit Court should not find the person in contempt of the Commission and why that person should not be punished by the Court therefore. The Circuit Court shall issue such orders and judgments therein as the Court deems appropriate.*

(Emphasis added.)

Thus, the relief requested and the motion is improper under J.Q.C. Rule 26. John Renke II respectfully requests that the motion be denied and that the movant's counsel be directed by order to follow the Rules of the Judicial Qualifications Commission and the Florida Rules of Civil Procedure if they want to subpoena records.

CONCLUSION

The subpoena is a subpoena which called for a deposition on Palm Sunday, March 20, 2005. John Renke II complied with the subpoena fully and the movant's counsel failed to appear. The subpoena itself was never personally served, required appearance at a non-existent location, did not follow the requirement of F.R.C.P. 1.351 and was a gigantic fishing expedition for thousands of irrelevant documents. Prior to the issuance of the amended charges in this case, the movant and its counsel failed to talk with John Renke II or anyone else working at the law office about the amended charges. Additionally, movant and its counsel failed to ask for any documents that would have proven the charge to be false. Only after the charges were filed did counsel attempt to depose John Renke II and obtain documents regarding the work performed by Judge John Renke in 2002. Michael Green, counsel for movant, finally got around to reviewing documents, but aborted the review on his own and never thereafter contacted John Renke II or his law office to resume inspection. Now, movant's counsel continues to try to create bad publicity without ever contacting John Renke II before filing this outrageous and untrue motion.

Movant attaches three purported letters to Mr. Tozian which John Renke II never received. Mr. Tozian is not the attorney for John Renke II and never had been employed by him. Mr. Green was totally aware that Mr. Tozian told him to get directly in contact with John Renke II in order to obtain any documents and Mr. Green and the movant failed to contact John Renke II to continue their voluntary aborted review. Because of the bad faith and failure to contact John Renke II and due to the lack of communication, lack of proper service and failure to follow rules, the movant's motion

should be denied and the movant should be required to file and serve properly any subpoenas as required by law.

WHEREFORE, the undersigned respectfully requests that the Motion to Enforce Subpoena and request for contempt be denied and that a protective order be entered ordering that the discovery requested in the aforementioned subpoena not be had until a valid subpoena is issued in accordance with the Florida Rules of Civil Procedure and which does not set the production on a Sunday. Said Protective Order should also provide that counsel for movant must follow the Rules of the Judicial Qualifications Commission and the Florida Rules of Civil Procedure regarding any subpoena of documents. The undersigned further requests that an order be entered ordering the Judicial Qualifications Commission and/or its attorney to pay to the undersigned the reasonable expenses including attorneys fees incurred by the undersigned in obtaining the protective order pursuant to Rules 1.280(c) and 1.380(a)(4), Fla. R. Civ. P.

Respectfully submitted,

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John K. Renke II
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FL Bar No.: 296740

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the Response to Motion to Enforce Subpoena and Motion for Protective Order has been

sent by U.S. Mail to Marvin E. Barkin, Esquire and Michael K. Green, Esquire, TRENAM, KEMKER, SCHARF, BARKIN, FRYE, O'NEILL & MULLIS, P.A., 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P.O. Box 1102, Tampa, FL 33601-1102, Thomas C. MacDonald, Jr., Esquire, Florida Judicial Qualifications Commission, 1904 Holly Lane Tampa, FL 33629, and Scott K. Tozian, Esquire, Smith & Tozian, P.A., 109 North Brush Street, Suite 200, Tampa, FL 33602-4163 this ___ day of May, 2005.

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John K. Renke II